AMENDMENTS to the DRAWINGS

No amendments or changes to the Drawings are proposed.

REMARKS

Response to Our Previous Reply and Amendment

We appreciate the reconsideration by the Examiner and withdrawal of the objections under 35 U.S.C. §103(a) over Shefi in view of Hattick and Douceur.

Rejections under 35 U.S.C. §103(a)

Whereas Shefi, Hattick and Douceur were previously cited, we respectfully maintain our previous arguments, and respectfully disagree with the Examiner's holding of obviousness and interpretation of the teachings of these references.

We have amended our claims to recite steps, elements, and limitations of our invention which are not taught or suggested by Shefi, Hattick, and Douceur, including how our invention uses three one-time pad tables to detect which of the three is a counterfeit table being used by a clone cell phone.

Some of the cited references only disclose one table with an ability to generate a one-time pad value based on some other values, and none of the references disclose such a three-table method being used to enable or disable cellular telephone service to deal with the problem of cloned cellular telephones.

For these reasons, and in view of the present amendment, we respectfully request allowance of the pending claims.

Request for Reconsideration of Each Claim as a Whole. The Federal Circuit has indicated that the claims must be considered as a whole, beyond analysis of only the differences between the individual claim components and multiple references:

> [Allthough Graham v. John Deere Co., 383 U.S. at 17,148 USPQ at 476, requires that certain factual inquiries, among them the differences between the prior art and the claimed invention, be conducted to support a determination of the issue of obviousness, the actual determination of the issue requires an evaluation in the light of the findings in those inquiries of the obviousness of the claimed invention as whole, not merely the differences between the claimed invention and the prior art. Lear Siegler, Inc. v. Aeroquip Corp., 733 F.2d 881,221 USPQ 1025,1033 (Fed. Cir. 1984) (emphasis added). See also Fromson v. Advance Offset Plate, Inc., 755 F.2d 1549,225 USPQ 26, 31 (Fed. Cir. 1985)

And:

> It is impermissible to use the claimed invention, as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re* Fritch, 972 F.2d 2160, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (quoting *In re* Fine, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 16 (Fed. Cir. 1988)). *See also* Akzo N.V. v. United Stated Int'l Trade Comm'n, 808 F.2d 1471, 1 USPQ2d 1241, 1246 (Fed. Cir. 1986), *cert. denied*, 483 U.S. 909 (1987).

We respectfully request reconsideration of the rejections in view of the claims as a whole.

Request for Explicit Determination of Ordinary Skill Level. The Court in *KSR Int'l v. Teleflex Inc., et al.,* (U.S. Supreme Court, April 30, 2007) ("KSR") reiterated the importance of "resolving" the ordinary skill level using objective analysis when applying 35 U.S.C. §103(a) in a rejection, as set earlier forth in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17 - 18 ("Graham"). The Court in *KSR* clearly stated the need for explicit analysis (our emphasis added):

> ". . . To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art. **To facilitate review, this analysis should be made explicit**. . . . "

The reasons for rejection under 35 U.S.C. §103(a) as set forth in the Office Action did not include explicit determination of what was the ordinary skill level in the art at the time of our invention. This explicit determination by objective analysis is a requirement of the Examiner. ("Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*:, Fed. Reg., Vol. 72, No. 195, October 10, 2007).

We believe that a *prima facie* case of obviousness cannot be established without completing all of the *Graham* inquiries, including determining ordinary skill level. We believe

the Supreme Court has stated that this determination should be explicit, rather than the tradition of presuming a skill level based upon the skill level evident in one or more cited references. To presume a skill level simply based upon the cited references would be using an *implied* skill level, not and explicitly determined skill level:

> **implied**
> *adj., adv.* referring to circumstances, conduct or statements of one or both parties which substitute for explicit language to prove authority to act, warranty, promise, trust, agreement, consent or easement, among other things. Thus circumstances "imply" something rather than spell it out. *(Source: http://dictionary.law.com/default2.asp?selected=903&bold =explicit on Aug. 28, 2008)*

We also respectfully propose that to rely upon implied skill levels without performing any analysis of factors such as those suggested by the Court in *Environmental Designs, Ltd. v. Union Oil* (713 F.2d 693, 696, 218 USPQ 865, 868 (Fed. Cir. 1983)) and in *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.* (796 F.2d 443, 449-450, 230 USPQ 416, 420 (Fed. Cir. 1986)) would be failing to provide any *analysis* subject for review as required by the Supreme Court in *KSR*.

For these reasons, we respectfully request an explicit determination of the ordinary skill level at the time of our invention.

Request for Indication of Allowable Subject Matter

We believe we have responded to all grounds of rejection and objection, but if the Examiner disagrees, we would appreciate the opportunity to supplement our reply.

We believe the present amendment places the claims in condition for allowance. If, for any reason, it is believed that the claims are not in a condition for allowance, we respectfully request constructive recommendations per MPEP 707.07(j) II which would place the claims in condition for allowance without need for further proceedings. We will respond promptly to any Examiner-initiated interviews or to consider any proposed examiner amendments.

Respectfully,

/ Robert Frantz /

Robert H. Frantz, Reg. No. 42,553
Registered U.S. Patent Agent, No. 42,553
Tel: (405) 812-5613
Franklin Gray Patents, LLC